

SUBCHAPTER C: APPLICATION FOR PERMIT OR POST-CLOSURE ORDER
§§305.41 - 305.45, 305.47 - 305.54
Effective October 29, 2009

§305.41. Applicability.

The sections of this subchapter apply to permit applications required to be filed with the commission for authorization under Texas Water Code (TWC), Chapters 26 - 28 and 32, and Texas Health and Safety Code (THSC), Chapters 361 and 401. The sections of this subchapter also apply to post-closure orders issued under the authority of THSC, §361.082 and TWC, §7.031.

Adopted June 14, 2006

Effective July 5, 2006

§305.42. Application Required.

(a) Any person who is required to obtain a permit, or who requests an amendment, modification, or renewal of a permit, or who requests a post-closure order, or who is required to obtain a post-closure order shall complete, sign, and submit an application to the executive director, according to the provisions of this chapter.

(b) For applications involving hazardous waste, persons currently authorized to continue hazardous waste management under interim status in compliance with §335.2(c) of this title (relating to Permit Required) and Texas Health and Safety Code (THSC), §361.082(e), shall apply for permits when required by the executive director. Owners or operators shall be allowed at least six months from the date of request to submit a Part B permit application. Owners or operators of existing hazardous waste management facilities may voluntarily submit Part B of the application at any time. However, owners or operators of existing hazardous waste management facilities must submit Part B permit applications in accordance with the dates specified in 40 Code of Federal Regulations (CFR) §270.73. Owners or operators of land disposal facilities in existence on the effective date of statutory or regulatory amendments under THSC, Chapter 361, or the Resource Conservation and Recovery Act of 1976, as amended, 42 United States Code, §§6901 *et seq.*, that render the facility subject to the requirement to have a hazardous waste permit must submit a Part B permit application in accordance with the dates specified in 40 CFR §270.73 and certify that such a facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(c) An application for a new, amended, or renewed radioactive material license under Chapter 336 of this title (relating to Radioactive Substance Rules) shall consist of one signed original and five copies. The executive director may request additional copies. Copies of an application for a low-level radioactive waste disposal license under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) shall be retained by the applicant for distribution in accordance with written instructions from the executive director.

(d) For applications involving hazardous waste management facilities for which the owner or operator has submitted Part A of the permit application and has not yet filed Part B, the owner or operator is subject to the requirements for updating the Part A application under 40 CFR §270.10(g), as amended and adopted in the CFR through June 29, 1995, as published in the *Federal Register* (60 FR 33911).

(e) Applications for hazardous and nonhazardous disposal well permits shall be processed in accordance with this chapter for the benefit of the state and the preservation of its natural resources.

(f) For applications involving a standard permit, the procedures for application and issuance are found in Subchapter R of this chapter (relating to Resource Conservation and Recovery Act Standard Permits for Storage and Treatment Units).

Adopted October 7, 2009

Effective October 29, 2009

§305.43. Who Applies.

(a) It is the duty of the owner of a facility to submit an application for a permit or a post-closure order. However, if the facility is owned by one person and operated by another and the executive director determines that special circumstances exist where the operator or the operator and the owner should both apply for a permit or a post-closure order, and for all Texas Pollutant Discharge Elimination System permits, it is the duty of the operator and the owner to submit an application for a permit.

(b) For industrial solid waste and hazardous waste permit applications, it is the duty of the owner of a facility to submit an application for a permit or a post-closure order, unless a facility is owned by one person and operated by another, in which case it is the duty of the operator to submit an application for a permit or a post-closure order.

(c) For municipal solid waste applications, it is the duty of the owner of a facility to submit an application for a permit, amendment, or modification. However, if a facility is owned by one person and operated by another, the owner may authorize, in writing, the operator to submit applications for a permit, amendment, or modification. For a new facility, the operator may submit an application for a permit with the written consent of the owner(s) of the land upon which the facility is to be located.

Adopted May 7, 2008

Effective May 29, 2008

§305.44. Signatories to Applications.

(a) All applications shall be signed as follows.

(1) For a corporation, the application shall be signed by a responsible corporate officer. For purposes of this paragraph, a responsible corporate officer means a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. Corporate procedures governing authority to sign permit or post-closure order applications may provide for assignment or delegation to applicable corporate positions rather than to specific individuals.

(2) For a partnership or sole proprietorship, the application shall be signed by a general partner or the proprietor, respectively.

(3) For a municipality, state, federal, or other public agency, the application shall be signed by either a principal executive officer or a ranking elected official. For purposes of this paragraph, a principal executive officer of a federal agency includes the chief executive officer of the agency, or a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., regional administrator of the EPA).

(b) A person signing an application shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(c) For a hazardous solid waste permit or a post-closure order, the application must be signed by the owner and operator of the facility.

(d) For radioactive material license applications under Chapter 336 of this title (relating to Radioactive Substance Rules), the applicant or person duly authorized to act for and on the applicant's behalf must sign the application.

Adopted January 8, 2003

Effective January 30, 2003

§305.45. Contents of Application for Permit.

(a) Forms for permit applications will be made available by the executive director. Each application for permit must include the following:

(1) the name, mailing address, and location of the facility for which the application is submitted;

(2) the ownership status as federal, state, private, public, or other entity;

(3) the applicant's name, mailing address, and telephone number;

(4) a brief description of the nature of the business;

(5) the activities conducted by the applicant which require a permit;

(6) a topographic map, ownership map, county highway map, or a map prepared by a Texas licensed professional engineer, Texas licensed professional geoscientist, or a registered surveyor which shows the facility and each of its intake and discharge structures and any other structure or location regarding the regulated facility and associated activities. Maps must be of material suitable for a

permanent record, and shall be on sheets 8-1/2 inches by 14 inches or folded to that size, and shall be on a scale of not less than one inch equals one mile. The map shall depict the approximate boundaries of the tract of land owned or to be used by the applicant and shall extend at least one mile beyond the tract boundaries sufficient to show the following:

(A) each well, spring, and surface water body or other water in the state within the map area;

(B) the general character of the areas adjacent to the facility, including public roads, towns and the nature of development of adjacent lands such as residential, commercial, agricultural, recreational, undeveloped, and so forth;

(C) the location of any waste disposal activities conducted on the tract not included in the application;

(D) the ownership of tracts of land adjacent to the facility and within a reasonable distance from the proposed point or points of discharge, deposit, injection, or other place of disposal or activity; and

(E) such other information that reasonably may be requested by the executive director;

(7) a listing of all permits or construction approvals received or applied for under any of the following programs:

(A) Hazardous Waste Management Program under the Texas Solid Waste Disposal Act;

(B) Underground Injection Control Program under the Texas Injection Well Act;

(C) National Pollutant Discharge Elimination System Program under the Clean Water Act and Waste Discharge Program under Texas Water Code, Chapter 26;

(D) Prevention of Significant Deterioration Program under the Federal Clean Air Act (FCAA);

(E) Nonattainment Program under the FCAA;

(F) national emission standards for hazardous air pollutants preconstruction approval under the FCAA;

(G) ocean dumping permits under the Marine Protection Research and Sanctuaries Act;

(H) dredge or fill permits under the FCAA;

(I) licenses under the Texas Radiation Control Act;

(J) subsurface area drip dispersal system permits under Texas Water Code, Chapter 32; and

(K) other environmental permits; and

(8) a supplementary technical report submitted in connection with an application. The report shall be prepared either by a Texas licensed professional engineer, a Texas licensed professional geoscientist, or by a qualified person who is competent and experienced in the field to which the application relates and thoroughly familiar with the operation or project for which the application is made. The report must include the following:

(A) a general description of the facilities and systems used for or in connection with the collection, transportation, treatment, and disposal of waste, or used in connection with an injection activity;

(B) for each outfall, injection well, place of deposit, or place of disposal:

(i) the volume and rate of disposal of the defined waste or of fluid injection, including appropriate averages, the maximum rates of disposal or injection over representative periods of time, and detailed information regarding patterns of disposal or injection; and

(ii) the physical, chemical, and radiological properties of the defined waste or the injection fluids; the characteristics of the waste or the injection fluid; the chemical, physical, thermal, organic, bacteriological, or radiological properties or characteristics, as applicable, described in enough detail to allow evaluation of the water and environmental quality considerations involved; and

(C) such other information as reasonably may be required by the executive director for an adequate understanding of the project or operation, and which is necessary to provide the commission an adequate opportunity to make the considerations required by §331.121 of this title (relating to Class I Wells), §331.122 of this title (relating to Class III Wells), §305.50 of this title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order), §305.48 of this title (relating to Additional Contents for Applications for Wastewater Discharge Permits), §305.54 of this title (relating to Additional Requirements for Radioactive Material Licenses), §336.207 of this title (relating to General Requirements for Issuance of a License), §336.513 of this title (relating to Technical Requirements for Active Disposal Sites), §336.617 of this title (relating to Technical Requirements for Inactive Disposal Sites), §336.705 of this title (relating to Content of Application), and Chapter 330, Subchapter E of this title (relating to Operational Standards for Municipal Solid Waste Storage and Processing Units).

(b) Only one application needs to be filed for each geographical location in which waste is or will be disposed of or discharged from, even though there may be more than one outfall, place of deposit, or other place of disposal covered in the application.

§305.47. Retention of Application Data.

A permittee or a recipient of a post-closure order shall keep records, throughout the term of the permit or order, of data used to complete the final application and any supplemental information.

Adopted January 8, 2003

Effective January 30, 2003

§305.48. Additional Contents of Applications for Wastewater Discharge Permits.

(a) The following shall be included in an application for a wastewater discharge permit.

(1) The original and one copy of the permit application shall be submitted on forms provided by or approved by the executive director, and shall be accompanied by a like number of copies of all technical supplements and attachments.

(2) If the application is for the disposal of any waste into or adjacent to a watercourse, the application shall show the ownership of the tracts of land adjacent to the treatment facility and for a reasonable distance along the watercourse from the proposed point of discharge. The applicant shall list on a map, or in a separate sheet attached to a map, the names and addresses of the owners of such tracts of land as can be determined from the current county tax rolls or other reliable sources. The application shall state the source of the information. This subsection does not apply to:

(A) an application to renew a permit; and

(B) an application for a new Texas Pollutant Discharge Elimination System (TPDES) permit for a discharge authorized by existing state permit issued before September 14, 1998 for which the application does not propose any term or condition that would constitute a major amendment to the state permit under §305.62 of this title (relating to Amendment).

(3) The applicant shall submit any other information reasonably required by the executive director to ascertain whether the facility will be constructed and operated in compliance with all pertinent state and federal statutes, including, but not limited to, the following:

(A) the operator's name, address, and telephone number;

(B) whether the facility is located on Indian lands;

(C) up to four Standard Industrial Classification (SIC) codes and North American Industry Classification System (NAICS) codes which best reflect the principal products or services provided by the facility.

(b) The following regulations contained in 40 Code of Federal Regulations, Part 122, which are in effect as of the date of TPDES program authorization, as amended, are incorporated by reference.

(1) Subpart B - Permit Applications and Special NPDES Program Requirements, §122.21(g), providing application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers.

(2) Subpart B - Permit Applications and Special NPDES Program Requirements, §122.21(h), providing application requirements for manufacturing, commercial, mining, and silvicultural facilities which discharge only nonprocess wastewater, except 40 Code of Federal Regulations §122.21(h)(4)(iii), the requirements of which are addressed in §305.126(e) of this title (relating to Additional Standard Permit Conditions for Waste Discharge Permits).

(3) Subpart B - Permit Applications and Special NPDES Program Requirements, §122.21(i), providing application requirements for new and existing concentrated animal feeding operations and aquatic animal production facilities.

(4) Subpart B - Permit Applications and Special NPDES Program Requirements, §122.21(r), providing application requirements for new facilities with new or modified cooling water intake structures.

(c) In addition to the information required by §305.45 of this title (relating to Contents of Application for Permit), an application by an individual for a waste discharge permit shall contain:

(1) the individual's full legal name and date of birth;

(2) the street address of the individual's place of residence;

(3) the identifying number from the individual's driver's license or personal identification certificate issued by the state or country in which the individual resides;

(4) the individual's sex; and

(5) any assumed business or professional name of the individual filed under Business and Commerce Code, Chapter 36.

Adopted March 19, 2003

Effective April 10, 2003

§305.49. Additional Contents of Application for an Injection Well Permit.

(a) The following must be included in an application for an injection well permit:

(1) for Class I wells, as defined in Chapter 331 of this title (relating to Underground Injection Control), the information listed in §331.121 of this title (relating to Class I Wells);

(2) for Class III wells, as defined in Chapter 331 of this title, the information listed in §331.122 of this title (relating to Class III wells);

(3) the manner in which compliance with the financial assurance requirements in Chapter 37 of this title (relating to Financial Assurance) will be attained;

(4) the manner in which compliance with the plugging and abandonment requirements of §331.46 of this title (relating to Closure Standards) will be attained;

(5) the manner in which compliance with the corrective action requirements of §331.44 of this title (relating to Corrective Action Standards) will be attained;

(6) the manner in which compliance with the post-closure requirements of §331.68 of this title (relating to Post-Closure Care) will be attained;

(7) for Class I wells, a letter from the Railroad Commission of Texas stating that the drilling of a disposal well and the injection of the waste into the subsurface stratum selected for disposal will not endanger or injure any oil or gas formation;

(8) for Class III wells, a description of all liquid and solid nonradioactive wastes resulting from mining activities;

(9) a complete delineation by a licensed professional geoscientist or a licensed professional engineer of any aquifer or portion of an aquifer for which exempt status is sought; and

(10) any other information reasonably required by the executive director to evaluate the proposed injection well or project, including, but not limited to, the information set forth in Texas Water Code, §27.051(a).

(b) An application for production area authorization shall be submitted with and contain the following for each production area:

(1) mine plan;

(2) a restoration table;

(3) a baseline water quality table;

(4) control parameter upper limits;

(5) monitor well locations;

(6) cost estimate for aquifer restoration and well plugging and abandonment; and

(7) other information reasonably required by the executive director to evaluate the application.

(c) An application under this section shall comply with the requirements of §305.50(a)(4)(B) of this title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order).

Adopted February 11, 2009

Effective March 12, 2009

§305.50. Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order.

(a) Unless otherwise stated, an application for a permit to store, process, or dispose of solid waste must meet the following requirements.

(1) One original and three copies of the permit application shall be submitted on forms provided by or approved by the executive director and shall be accompanied by a like number of originals and copies of all required exhibits.

(2) Plans and specifications for the construction and operation of the facility and the staffing pattern for the facility shall be submitted, including the qualifications of all key operating personnel. Also to be submitted is the closing plan for the solid waste storage, processing, or disposal facility. The information provided must be sufficiently detailed and complete to allow the executive director to ascertain whether the facility will be constructed and operated in compliance with all pertinent state and local air, water, public health, and solid waste statutes. Also to be submitted are listings of sites owned, operated, or controlled by the applicant in the State of Texas. For purposes of this section, the terms "permit holder" and "applicant" include each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock, provided such partner or owner controls at least 20% of the permit holder or applicant and at least 20% of another business which operates a solid waste management facility.

(3) Any other information as the executive director may deem necessary to determine whether the facility and the operation thereof will comply with the requirements of the Texas Solid Waste Disposal Act (TSWDA) and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), shall be included, including, but not limited to, the information set forth in the TSWDA, §4(e)(13).

(4) An application for a permit, permit amendment, or permit modification to store, process, or dispose of hazardous waste is subject to the following requirements, as applicable.

(A) In the case of an application for a permit to store, process, or dispose of hazardous waste, the application shall also contain any additional information required by 40 Code of Federal Regulations (CFR) §§270.13 - 270.27 (as amended through July 14, 2006 (71 Federal Register 40254), except that closure cost estimates shall be prepared in accordance with 40 CFR §264.142(a)(1), (3), and (4), as well as §37.131 of this title (relating to Annual Inflation Adjustments to Closure Cost Estimates), §37.141 of this title (relating to Increase in Current Cost Estimate), and §335.178 of this title (relating to Cost Estimate for Closure).

(B) An application for a permit to store, process, or dispose of hazardous waste shall also contain financial information sufficient to demonstrate to the satisfaction of the executive director that the applicant has sufficient financial resources to operate the facility in a safe manner and in compliance with the permit and all applicable rules, including, but not limited to, how an applicant intends to obtain financing for construction of the facility, and to close the facility properly. Financial information submitted to satisfy this subparagraph shall meet the requirements of subparagraph (C) or (D) of this paragraph.

(C) For applicants possessing a resolution from a governing body approving or agreeing to approve the issuance of bonds for the purpose of satisfying the financial assurance requirements of subparagraph (B) of this paragraph, submission of the following information will be an adequate demonstration:

(i) a statement signed by an authorized signatory in accordance with §305.44(a) of this title (relating to Signatories to Applications) explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide adequate liability coverage for the facility. This statement must also address how the applicant intends to comply with the financial assurance requirements for closure, post-closure, corrective action, and liability coverage in accordance with Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities);

(ii) a certified copy of the resolution; and

(iii) certification by the governing body of passage of the resolution.

(D) For all applicants not meeting the requirements of subparagraph (C) of this paragraph, financial information submitted to satisfy the requirements of subparagraph (B) of this paragraph must include the applicable items listed under clauses (i) - (vii) of this subparagraph. Financial statements required under clauses (ii) and (iii) of this subparagraph shall be prepared in accordance with generally accepted accounting principles and include a balance sheet, income statement, cash flow statement, notes to the financial statements, and accountant's opinion letter:

(i) a statement signed by an authorized signatory in accordance with §305.44(a) of this title explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide adequate liability coverage for the facility. This statement must also address how the applicant intends to comply with the financial assurance requirements for closure, post-closure, corrective action, and liability coverage in accordance with Chapter 37, Subchapter P of this title;

(ii) for applicants for which audited financial statements have been prepared the previous two or more years, the following financial statements:

(I) audited financial statements for the previous two years; and

(II) the most current quarterly financial statement prepared according to generally accepted accounting principles;

(iii) for applicants for which audited financial statements have not been prepared the previous two or more years, the following copies of tax returns and financial statements:

(I) copies of tax returns for the previous two years, each certified by original signature of an authorized signatory as being a "true and correct copy of the return filed with the Internal Revenue Service";

(II) financial statements for the previous two years; and

(III) additionally, an audited financial statement for the most recent fiscal year;

(iv) for publicly traded companies, copies of Securities and Exchange Commission Form 10-K for the previous two years and the most current Form 10-Q;

(v) for privately-held companies, written disclosure of the information that would normally be found in Securities and Exchange Commission Form 10-K including, but not limited to, the following:

(I) descriptions of the business and its operations;

(II) identification of any affiliated relationships;

(III) credit agreements and terms;

(IV) any legal proceedings involving the applicant;

(V) contingent liabilities; and

(VI) significant accounting policies;

(vi) for applications encompassing facility expansion, capacity expansion, or new construction, estimates of capital costs for expansion and/or construction;

(vii) if an applicant cannot or chooses not to demonstrate sufficient financial resources through submittal of the financial documentation specified in clauses (i) - (v) of this subparagraph and who must or chooses to obtain additional financing through a new stock offering or new debt issuance for facility expansion, capacity expansion, or new construction; and for safe operation, proper closure, and adequate liability coverage, the following information:

(I) a financial plan sufficiently detailed to clearly demonstrate that the applicant will be in a position to readily secure financing for construction, operation, and closure if the permit is issued. The submitted financial plan must be accompanied by original letters of opinion from two financial experts, not otherwise employed by the applicant, who have the demonstrated ability to either finance the facility or place the required financing. The opinion letters must certify that the

financial plan is reasonable; certify that financing is obtainable within 180 days of final administrative and judicial disposition of the permit application; and include the time schedule contingent upon permit finality for securing the financing. Only one opinion letter from a financial expert, not otherwise employed by the applicant, is required if the letter renders a firm commitment to provide all the necessary financing; and

(II) written detail of the annual operating costs of the facility and a projected cash flow statement including the period of construction and first two years of operation. The cash flow statement must demonstrate the financial resources to meet operating costs, debt service, and financial assurance for closure, post-closure care, and liability coverage requirements. A list of the assumptions made to forecast cash flow shall also be provided.

(E) If any of the information required to be disclosed under subparagraph (D) of this paragraph would be considered confidential under applicable law, the information shall be protected accordingly. During hearings on contested applications, disclosure of confidential information may be allowed only under an appropriate protective order.

(F) An application for a modification or amendment of a permit that includes a capacity expansion of an existing hazardous waste management facility must also contain information provided by a Texas licensed professional geoscientist or licensed professional engineer delineating all faults within 3,000 feet of the facility, together with a demonstration, unless previously demonstrated to the commission or the EPA, that:

(i) the fault has not experienced displacement within Holocene time, or if faults have experienced displacement within Holocene time, that no such faults pass within 200 feet of the portion of the surface facility where treatment, storage, or disposal of hazardous wastes will be conducted; and

(ii) the fault will not result in structural instability of the surface facility or provide for groundwater movement to the extent that there is endangerment to human health or the environment.

(G) At any time after the effective date of the requirements contained in Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), the executive director may require the owner or operator of an existing hazardous waste management facility to submit that portion of his application containing the information specified in 40 CFR §§270.14 - 270.27. Any owner or operator shall be allowed a reasonable period of time from the date of the request to submit the information. An application for a new hazardous waste management facility must be submitted at least 180 days before physical construction of the facility is expected to commence.

(5) An application for a new hazardous waste landfill which is filed after January 1, 1986, must include an engineering report which evaluates the benefits, if any, associated with the construction of the landfill above existing grade at the proposed site, the costs associated with the above-grade construction, and the potential adverse effects, if any, which would be associated with the above-grade construction.

(6) An application for a new hazardous waste landfill, land treatment facility, or surface impoundment that is to be located in the apparent recharge zone of a regional aquifer must include a hydrogeologic report prepared by a Texas licensed professional geoscientist or licensed professional engineer documenting the potential effects, if any, on the regional aquifer in the event of a release from the waste containment system.

(7) Engineering plans and specifications submitted as part of the permit application shall be prepared and sealed by a Texas licensed professional engineer who is currently registered as required by the Texas Engineering Practice Act.

(8) After August 8, 1985, any Part B permit application submitted by an owner or operator of a facility that stores, processes, or disposes of hazardous waste in a surface impoundment or a landfill must be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. By August 8, 1985, owners and operators of a landfill or a surface impoundment who have already submitted a Part B application must submit the exposure information required by this paragraph. At a minimum, such information must address:

(A) reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

(B) the potential pathways of human exposure to hazardous wastes or constituents resulting from documented releases; and

(C) the potential magnitude and nature of the human exposure resulting from such releases.

(9) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new hazardous waste management facility, or an application for amendment or modification of a solid waste management facility permit to provide for capacity expansion, the application shall also identify the nature of any known specific and potential sources, types, and volumes of waste to be stored, processed, or disposed of by the facility and shall identify any other related information the executive director may require.

(10) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new hazardous waste management facility, the application must also contain the following:

(A) copies of any relevant land use plans, adopted in accordance with the Texas Local Government Code, Chapter 211, which were in existence before publication of the notice of intent to file a solid waste permit application or, if no notice of intent is filed, at the time the permit application is filed;

(B) identification of the names and locations of industrial and other waste-generating facilities within 1/2 mile of the facility in the case of an application for a permit for a new on-

site hazardous waste management facility, and within one mile of the facility in the case of an application for a permit for a new commercial hazardous waste management facility;

(C) the approximate quantity of hazardous waste generated or received annually at those facilities described under subparagraph (B) of this paragraph;

(D) descriptions of the major routes of travel in the vicinity of the facility to be used for the transportation of hazardous waste to and from the facility, together with a map showing the land-use patterns, covering at least a five-mile radius from the boundaries of the facility; and

(E) the information and demonstrations concerning faults described under paragraph (4)(F) of this subsection.

(11) In the case of an application for a permit to store, process, or dispose of hazardous waste, the application shall also contain information sufficient to demonstrate to the satisfaction of the commission that a proposed hazardous waste landfill, areal expansion of such landfill, or new commercial hazardous waste land disposal unit is not subject to inundation as a result of a 100-year flood event. An applicant or any other party may not rely solely on floodplain maps prepared by the Federal Emergency Management Agency or a successor agency to determine whether a hazardous waste landfill, areal expansion of such landfill, or commercial hazardous waste land disposal unit is subject to such an inundation.

(12) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new commercial hazardous management facility, the application shall also contain the following:

(A) information sufficient to demonstrate whether a burden will be imposed on public roadways by vehicles traveling to and from the facility, including, at a minimum:

(i) the average gross weight of the various types and sizes of such vehicles to be used for transportation of hazardous waste;

(ii) the average number of such vehicles which would travel the public roadways; and

(iii) identification of the roads to be used by vehicles traveling to and from the facility within a minimum radius of 2 1/2 miles from the facility. Such identification must include the major highways nearest the facility, even if they are located outside the 2 1/2 mile radius;

(B) in addition to the requirements of subparagraph (A) of this paragraph, an applicant may submit a letter from the relevant agency of the state, county, or municipality which has the authority to regulate and maintain roads which states unequivocally that the roads to and from the facility are adequate for the loads to be placed on them by the proposed facility. Such letter will serve as prima facie evidence that the additional loads placed on the roadways caused by the operation of the facility would not constitute a burden and thus would not require that improvements be made to such roadways.

Such letter does not, however, obviate the need to submit the information required under subparagraph (A) of this paragraph;

(C) evidence sufficient to demonstrate that:

(i) emergency response capabilities are available or will be available before the facility first receives waste, in the area in which the facility is located or proposed to be located, that has the ability to manage a reasonable worst-case emergency condition associated with the operation of the facility; such evidence may include, but is not limited to, the following:

(I) in addition to the contingency plan required under 40 CFR §270.14(b)(7), provisions specifying procedures and timing of practice facility evacuation drills, where there is a possibility that evacuation of the facility could be necessary;

(II) contracts with any private corporation, municipality, or county to provide emergency response;

(III) weather data which might tend to affect emergency response;

(IV) a definition of worst-case emergencies, e.g., fires, explosions, the Texas Design Hurricane, or the Standard Project Hurricane;

(V) a training program for personnel for response to such emergencies;

(VI) identification of first-responders;

(VII) identification of local or regional emergency medical services and hospitals which have had hazardous materials training;

(VIII) a pre-disaster plan, including drills;

(IX) a mechanism for notifying all applicable government agencies when an incident occurs (i.e., Texas Commission on Environmental Quality, Texas Parks and Wildlife, General Land Office, Texas Department of State Health Services, and Texas Railroad Commission);

(X) a showing of coordination with the local emergency planning committee and any local comprehensive emergency management plan; and

(XI) any medical response capability which may be available on the facility property; or

(ii) the applicant has secured bonding of sufficient financial assurance to fund the emergency response personnel and equipment determined to be necessary by the executive

director to manage a reasonable worst-case emergency condition associated with the facility; such financial assurance may be demonstrated by providing information which may include, but is not limited to, the following:

(I) long-term studies using an environmental model which provide the amount of damages for which the facility is responsible; and

(II) costs involved in supplying any of the information included in or satisfying any of the requirements of clause (i)(I) - (XI) of this subparagraph;

(D) if an applicant does not elect to provide its own facilities or secure bonding to ensure sufficient emergency response capabilities in accordance with §335.183 of this title (relating to Emergency Response Capabilities Required for New Commercial Hazardous Waste Management Facilities), the applicant must provide prior to the time the facility first receives waste:

(i) documentation showing agreements with the county and/or municipality in which the facility is located, or documentation showing agreements with an adjoining county, municipality, mutual aid association, or other appropriate entity such as professional organizations regularly doing business in the area of emergency and/or disaster response; or

(ii) demonstration that a financial assurance mechanism in the form of a negotiable instrument, such as a letter of credit, fully paid in trust fund, or an insurance policy, with the limitation that the funds can only be used for emergency response personnel and equipment and made payable to and for the benefit of the county government and/or municipal government in the county in which the facility is located or proposed to be located; and

(E) a written statement signed by an authorized signatory in accordance with §305.44(a) of this title explaining how the applicant intends to provide emergency response financial assurance to meet the requirements of subparagraph (C) or (D) of this paragraph; and

(F) a summary of the applicant's experience in hazardous waste management and in particular the hazardous waste management technology proposed for the application location, and, for any applicant without experience in the particular hazardous waste management technology, a conspicuous statement of that lack of experience.

(13) An application for a boiler or industrial furnace burning hazardous waste at a facility at which the owner or operator uses direct transfer operations to feed hazardous waste from transport vehicles (containers, as defined in 40 CFR §266.111) directly to the boiler or industrial furnace shall submit information supporting conformance with the standards for direct transfer provided by 40 CFR §266.111 and §335.225 of this title (relating to Additional Standards for Direct Transfer).

(14) The executive director may require a permittee or an applicant to submit information in order to establish permit conditions under §305.127(4)(A) and (1)(B)(iii) of this title (relating to Conditions to be Determined for Individual Permits).

(15) If the executive director concludes, based on one or more of the factors listed in subparagraph (A) of this paragraph that compliance with the standards of 40 CFR Part 63, Subpart EEE alone may not be protective of human health or the environment, the executive director shall require the additional information or assessment(s) necessary to determine whether additional controls are necessary to ensure protection of human health and the environment. This includes information necessary to evaluate the potential risk to human health and/or the environment resulting from both direct and indirect exposure pathways. The executive director may also require a permittee or applicant to provide information necessary to determine whether such an assessment(s) should be required. The executive director shall base the evaluation of whether compliance with the standards of 40 CFR Part 63, Subpart EEE alone is protective of human health or the environment on factors relevant to the potential risk from a hazardous waste combustion unit, including, as appropriate, any of the following factors:

(A) particular site-specific considerations such as proximity to receptors (such as schools, hospitals, nursing homes, day-care centers, parks, community activity centers, or other potentially sensitive receptors), unique dispersion patterns, etc.;

(B) identities and quantities of emissions of persistent, bioaccumulative, or toxic pollutants considering enforceable controls in place to limit those pollutants;

(C) identities and quantities of nondioxin products of incomplete combustion most likely to be emitted and to pose significant risk based on known toxicities (confirmation of which should be made through emissions testing);

(D) identities and quantities of other off-site sources of pollutants in proximity of the facility that significantly influence interpretation of a facility-specific risk assessment;

(E) presence of significant ecological considerations, such as the proximity of a particularly sensitive ecological area;

(F) volume and types of wastes, for example wastes containing highly toxic constituents;

(G) other on-site sources of hazardous air pollutants that significantly influence interpretation of the risk posed by the operation of the source in question;

(H) adequacy of any previously conducted risk assessment, given any subsequent changes in conditions likely to affect risk; and

(I) such other factors as may be appropriate.

(16) If, as the result of an assessment(s) or other information, the executive director determines that conditions are necessary in addition to those required under 40 CFR Part 63, Subpart EEE, Parts 264 or 266 to ensure protection of human health and the environment, including revising emission limits, he/she shall include those terms and conditions in a Resource Conservation and Recovery Act permit for a hazardous waste combustion unit.

(b) An application specifically for a post-closure permit or for a post-closure order for post-closure care must meet the following requirements, as applicable.

(1) An application for a post-closure permit or a post-closure order shall contain information required by 40 CFR §270.14(b)(1), (4) - (6), (11), (13), (14), (18), and (19), (c), and (d), and any additional information that the executive director determines is necessary from 40 CFR §§270.14, 270.16 - 270.18, 270.20, or 270.21, except that closure cost estimates shall be prepared in accordance with 40 CFR §264.142(a)(1), (3), and (4), as well as §§37.131, 37.141, 335.127, and 335.178 of this title.

(2) An application for a post-closure order shall also contain financial information sufficient to demonstrate to the satisfaction of the executive director that the applicant has sufficient financial resources to operate the facility in a safe manner and in compliance with the post-closure order and all applicable rules. Financial information submitted to satisfy this paragraph shall meet the requirements of Chapter 37, Subchapter P of this title.

(3) An application for a post-closure order or for a post-closure permit must also contain any other information as the executive director may deem necessary to determine whether the facility and the operation thereof will comply with the requirements of the TSWDA and Chapter 335 of this title including, but not limited to, the information set forth in TSWDA, §361.109.

(4) The executive director may require an applicant for a post-closure order to submit information in order to establish conditions under §305.127(4)(A) of this title.

(5) An application for a post-closure order or for a post-closure permit shall also contain the information listed in §305.45(a)(1) of this title (relating to Contents of Application for Permit).

(6) All engineering and geoscientific information submitted to the agency shall be prepared by, or under the supervision of, a licensed professional engineer or licensed professional geoscientist, and shall be signed, sealed, and dated by qualified professionals as required by the Texas Engineering Practice Act and the Texas Geosciences Practice Act and the licensing and registration boards under these acts.

(7) One original and three copies of an application for a post-closure permit or for a post-closure order shall be submitted on forms provided by, or approved by, the executive director and shall be accompanied by a like number of originals and copies of all required exhibits.

Adopted October 7, 2009

Effective October 29, 2009

§305.51. Revision of Applications for Hazardous Waste Permits.

(a) Owners or operators of hazardous waste management facilities, who qualify for interim status pursuant to 40 Code of Federal Regulation Part 270, Subpart G, who have continuing authority to store, process, and/or dispose of hazardous waste pursuant to Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), and who filed a Part A permit application pursuant to 40 Code of Federal Regulations §270.10 shall file a revised Part A application with the executive director for any of the following changes during interim status:

(1) new hazardous wastes not identified in the original application are stored, processed or disposed of at the facility;

(2) increases in the design capacity of processes used at the facility occur;

(3) changes in the processes for management of the waste occur or additional processes are added;

(4) changes in the ownership or operational control of a facility are made; or

(5) newly regulated units for the storage, processing, or disposal of hazardous waste are added.

(b) The purpose of this section is to delineate requirements for filing a revised application, not to authorize any changes in facility operation. Changes in facility operations will be reviewed and approved by the executive director. In deciding whether to approve the proposed change, the executive director may consider the requirements set forth in 40 Code of Federal Regulations §270.72. For changes in the ownership or operational control of a facility, the new owner or operator shall submit a revised Part A permit application no later than 90 days prior to the scheduled change and shall also comply with the requirements set forth in 40 Code of Federal Regulations §270.72(d). A permit will be required for the operation of an above-grade landfill not described in a Part A application filed pursuant to §335.43 of this title (relating to Permit Required) prior to the effective date of this section.

(c) Except as specifically allowed under this subsection, changes listed under subsection (a) of this section may not be made if they amount to reconstruction of the hazardous waste management facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds 50% of the capital cost of a comparable entirely new hazardous waste management facility. If all other requirements are met, the following changes may be made even if they amount to a reconstruction:

(1) changes made solely for the purposes of complying with the requirements of 40 Code of Federal Regulations (CFR) §265.193 for tanks and ancillary equipment;

(2) if necessary to comply with federal, state, or local requirements, changes to an existing unit, changes solely involving tanks or containers, or addition of replacement surface impoundments that satisfy the standards of §3004(o) of the Resource Conservation and Recovery Act (RCRA), as amended;

(3) changes that are necessary to allow owners or operators to continue handling newly listed or identified hazardous wastes that have been stored, processed, or disposed of at the facility prior to the effective date of the United States Environmental Protection Agency (EPA) regulation establishing the new listing or identification;

(4) changes during closure of a facility or of a unit within a facility made in accordance with an approved closure plan;

(5) changes necessary to comply with an interim status corrective action order issued by the EPA under §3008(h) of the RCRA, as amended, or other federal authority, by an authorized State under comparable state authority, or by a court in a judicial proceeding brought by the EPA or an authorized State, provided that such changes are limited to the storage, processing, or disposal of solid waste from releases that originate within the boundary of the facility;

(6) changes to store or process, in tanks, containers, or containment buildings, hazardous wastes subject to land disposal restrictions imposed by 40 CFR, Part 268 or by §3004 of the RCRA, provided that such changes are made solely for the purpose of complying with 40 CFR, Part 268 or §3004 of the RCRA, as amended;

(7) addition of newly regulated units under subsection (a)(5) of this section; and

(8) changes necessary to comply with standards under 40 CFR Part 63, Subpart EEE - National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors.

Adopted November 10, 1999

Effective December 5, 1999

§305.52. Waste Containing Radioactive Materials.

An application which involves the disposal of a waste containing radioactive materials shall be accompanied by a letter or other instrument in writing from the commission, the Texas Department of Health, or any other appropriate authority stating either that the applicant, or the person delivering the waste containing radioactive materials for disposal by the applicant, has a license from the commission, the Texas Department of Health, or any other appropriate authority governing waste containing radioactive materials; or that the applicant or the person served by the applicant does not need such a license. This section does not apply to applications under Chapter 336 of this title (relating to Radioactive Substance Rules).

Adopted May 14, 1997

Effective June 5, 1997

§305.53. Application Fee.

(a) Except for radioactive material licenses or as specifically provided hereunder, an applicant shall include with each application a fee of \$100.

(1) The permit application fee for each disposal well which will not be authorized to receive hazardous waste is \$100. The fee for each disposal well which will be authorized to receive hazardous waste is \$2,000.

(2) The permit application fee for each solid waste management facility to be used for the storage, processing, or disposal of hazardous waste, the Part B application for which was filed after September 1, 1985, shall be not less than \$2,000 and not more than \$50,000 as calculated in accordance with the following:

(A) site evaluation - \$100 per acre of solid waste facility up to 300 acres; no additional fee thereafter;

(B) process analysis - \$1,000;

(C) facility unit(s) analysis - \$500 per unit;

(D) management/facility analysis - \$500.

(3) For purposes of paragraph (2)(C) of this subsection, each landfill, surface impoundment, incinerator, waste pile, tank, and container storage area shall be considered a facility unit subject to the \$500 per unit fee; except that multiple storage tanks or container storage area identical in type and use will be subject to a single \$500 unit fee.

(4) The permit application fee for water use permits shall be submitted in accordance with §§295.131 - 295.140 of this title (relating to Water Use Permit Fees).

(5) The permit application fee for mine shaft permits shall be submitted in accordance with §329.9 of this title (relating to Procedures for Applications).

(6) The permit application fees for wastewater disposal permits shall not be less than \$100 and not more than \$2,000 as follows.

(A) Agricultural permit applications fees are as follows:

(i) minor amendments - \$100; and

(ii) new, amendment, and renewal applications - \$300.

(B) Domestic wastewater permit application fees are based upon the following flow categories:

(i) minor amendments - \$100;

(ii) new, amendment, and renewal applications less than 50,000 gallons per day - \$300;

(iii) new, amendment, and renewal applications 50,000 to less than 100,000 gallons per day - \$500;

(iv) new, amendment, and renewal applications 100,000 to less than 250,000 gallons per day - \$800;

(v) new, amendment, and renewal applications 250,000 to less than 500,000 gallons per day - \$1,200;

(vi) new, amendment, and renewal applications 500,000 to less than 1 million gallons per day - \$1,600; and

(vii) new, amendment, and renewal applications 1 million and greater gallons per day - \$2,000.

(C) Municipal storm water permit application fees as follows:

(i) minor amendments - \$100; and

(ii) new, major amendments, and renewal applications - \$2,000.

(D) Industrial wastewater permit application fees are based upon the EPA major/minor designation and the commission assigned toxicity rating as follows:

(i) minor amendments for minor facilities - \$100;

(ii) minor amendments for major facilities - \$400;

(iii) new, amendment, and renewal applications for minor facilities that are not subject to categorical standards promulgated by EPA (40 Code of Federal Regulations, Part 400) - \$300;

(iv) new, amendment, and renewal applications for minor facilities that must comply with a categorical standard promulgated by the EPA (40 Code of Federal Regulations, Part 400) - \$1,200; and

(v) new, amendment, and renewal applications for major facilities - \$2,000.

(7) The fees established by this section are due at the time that the application is filed in accordance with §281.3 of this title (relating to Initial Review), except that for hazardous waste permit applications filed on or after September 1, 1985, but prior to the effective date of paragraph (2) of this subsection are due at the time that the application is forwarded to the chief clerk of the Texas Commission on Environmental Quality for purposes of issuance of the notice of application. Unless the recommendation of the executive director is that the application be denied, the commission will not consider an application for final decision until such time as the fees in accordance with paragraph (2) of this subsection are paid.

(b) An applicant shall also include with each application for a new, amended, or modified permit a fee of \$50 to be applied toward the cost of providing required notice. A fee of \$15 is required with each application for renewal. This subsection does not apply to radioactive material licenses.

(c) Each application for a radioactive material license shall be accompanied by the applicable fee. The fee for a license shall be calculated in accordance with Chapter 336, Subchapter B of this title (relating to Radioactive Substance Fees).

Adopted December 17, 2003

Effective January 8, 2004

§305.54. Additional Requirements for Radioactive Material Licenses.

(a) An applicant may incorporate by reference information contained in previous applications, statements, or reports filed with the executive director. References shall be specifically stated, and shall incorporate accurate, legible, and up-to-date information.

(b) If the applicant is a corporation under the Texas Business Corporation Act, written verification (either affidavit or tax receipt) shall be submitted with the application to confirm that no tax owed the state under Chapter 171, Tax Code, is delinquent.

(c) An application shall include information on ownership of the land on which the proposed project will be located, ownership of the proposed facilities, buildings, structures, and equipment, and ownership of properties adjacent to the proposed site.

(d) An application for a license may include a request for a license authorizing one or more activities provided the application specifies the additional activities for which licenses are requested and complies with commission rules as to applications for those licenses. The commission may require the issuance of separate specific licenses for those activities.

(e) The commission or executive director may at any time after the filing of the original application, and before the expiration of the license, require further statements or data to enable the commission to determine whether the application should be granted or denied or whether a license should be amended, renewed, or revoked.

(f) Applicants for licenses, other than renewals, shall describe in the application how facility design and procedures for operation will minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize the generation of low-level radioactive waste.

Adopted August 23, 2000

Effective September 14, 2000